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BEFORE THE ARIZONA CORPORATION COMMISSION

1
2 COMMISSIONERS

Arizona Corporation Commission

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DOCKET CONTROL

3 SUSAN BITTER SMITH
4 BOB STUMP
5 BOB BURNS
6 DOUG LITTLE
7 TOM FORESE

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8 In the matter of:

DOCKET NO. S-20926A-15-0116

9 DEER PARK DEVELOPMENT CORPORATION,

10 MARTY O'MALLEY and JULIE UNRUH
11 O'MALLEY, husband and wife,

12 ROBERT D. BJERKEN,

13 Respondents.

SIXTH
PROCEDURAL ORDER
(Grants Motion)

14 **BY THE COMMISSION:**

15 On April 8, 2015, the Securities Division ("Division") of the Arizona Corporation
16 Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to
17 Cease and Desist, for Restitution, for Administrative Penalties, and for Other Affirmative Action
18 ("Notice") against Deer Park Development Corporation, Marty O'Malley and Julie Unruh O'Malley,
19 husband and wife (the "O'Malleys"), and Robert D. Bjerken (collectively "Respondents"), in which
20 the Division alleged violations of the Arizona Securities Act ("Act") in connection with the offer and
21 sale of securities in the form of stock.

22 The spouse of Marty O'Malley, Julie Unruh O'Malley ("Respondent Spouse"), is joined in
23 the action pursuant to A.R.S. § 44-2031(C) solely for the purpose of determining the liability of the
24 marital community.

25 The Respondents were duly served with copies of the Notice.

26 On April 23, 2015, Respondents Marty O'Malley and Julie Unruh O'Malley filed a Request
27 for Hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306.

28 On April 24, 2015, Respondents Marty O'Malley and Julie Unruh O'Malley filed a Notice of
Bankruptcy Filing. The Notice, filed through the O'Malleys' Special Litigation Counsel in Nevada,
stated that the O'Malleys filed a Chapter 11 Bankruptcy Petition with the United States District

1 Bankruptcy Court, District of Nevada, on January 30, 2014, which was converted to a case under
2 Chapter 7 on August 5, 2014. The Notice advised that 11 U.S.C. § 362(a)(1) prohibits
3 commencement of judicial, administrative or other proceedings against the debtors.

4 On May 13, 2015, by Procedural Order, a pre-hearing conference was scheduled for June 3,
5 2015.

6 On May 18, 2015, counsel filed a Notice of Appearance on Behalf of Respondents Marty
7 O'Malley and Julie Unruh O'Malley. Counsel for the O'Malleys also filed a Response to Notice of
8 Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order
9 for Administrative Penalties and Order for Other Affirmative Action.

10 On June 3, 2013, a pre-hearing conference was held. The Division and the O'Malleys
11 appeared through counsel. Counsel for the O'Malleys stated that his clients' bankruptcy matter is
12 ongoing. Counsel for the Division stated the Division's position is that the bankruptcy has no effect
13 upon these proceedings. The parties agreed to a hearing schedule.

14 On June 3, 2015, by Procedural Order, a hearing was scheduled to commence on November 2,
15 2015.

16 On June 16, 2015, Respondent Bjerken untimely filed an Answer. The Answer was
17 apparently sent by email on May 12, 2015, and received by the Division on May 20, 2015, as
18 indicated by date stamp. Mr. Bjerken indicates that the Answer was filed late as a result of a hospital
19 stay.

20 On June 19, 2015, Respondent Bjerken untimely filed a second Answer, again stating the
21 filing was late due to a hospital stay.

22 On June 25, 2015, by Procedural Order, a procedural conference was scheduled to commence
23 on July 9, 2015, to determine whether good cause exists for the late filing of the Answers from
24 Respondent Bjerken and whether the Answers should also be considered a request for hearing.

25 On July 1, 2015, the Division filed its Response to Pleadings filed by Respondent Robert D.
26 Bjerken.

27 On July 9, 2015, a procedural conference was held. The Division appeared through counsel.
28 The O'Malleys appeared telephonically through counsel. Respondent Bjerken appeared pro per.

1 Respondent Bjerken attributed his late filing to his medical conditions and hospitalization. Mr.
2 Bjerken stated his desire to participate in a hearing in this matter. Good cause was found to accept
3 Mr. Bjerken's filings as a timely request for hearing. Mr. Bjerken did not object to the previously
4 scheduled dates for the hearing and disclosure. The Division asserted that the Answers filed by Mr.
5 Bjerken do not comply with A.A.C. R14-4-305 as neither Answer contains a response to all of the
6 allegations made in the Notice. Mr. Bjerken was granted additional time to file an amended answer
7 that complies with A.A.C. R14-4-305.

8 Also on July 9, 2015, by Procedural Order, the hearing scheduled to commence on November
9 2, 2015, was affirmed. Mr. Bjerken was ordered to file an amended answer to the Notice by July 21,
10 2015.

11 On July 24, 2015, the Division filed a Status Report Regarding Letter by Respondent Robert
12 D. Bjerken Dated July 19, 2015 and Received by Division Counsel on July 23, 2015. Counsel for the
13 Division reported having received a July 19, 2015 letter from Mr. Bjerken stating that he will not be
14 filing an amended answer. The Division filed Mr. Bjerken's letter as an attachment.

15 On July 29, 2015, the O'Malleys' counsel, Chad A. Hester, filed an Expedited Ex Parte
16 Motion to Withdraw as Counsel for Defendants Marty O'Malley and Julie Unruh O'Malley. Citing
17 ER 1.16(b) of the Arizona Rules of Professional Conduct, Mr. Hester contended good cause existed
18 for the permissive withdrawal of his representation of the O'Malleys.

19 On August 13, 2015, by Procedural Order, Mr. Hester's Motion to Withdraw was granted.

20 On August 28, 2015, Mr. O'Malley filed a motion ("Motion") requesting an extension of time
21 for the exchange of witness lists and exhibits from September 3, 2015 to September 18, 2015. Mr.
22 O'Malley stated the reason for the extension is that his attorney is out of town until September 8,
23 2015. Mr. O'Malley asserted that he has spoken to the Division and they do not oppose an extension
24 to no later than September 18, 2015. Mr. O'Malley further asserted that he attempted to obtain a
25 position from Mr. Bjerken, but Mr. O'Malley did not yet receive a response.

26 Good cause has been shown to continue the exchange of witness lists and exhibits.

27 IT IS THEREFORE ORDERED that the Motion is hereby granted. **The Division and**
28 **Respondents shall exchange copies of their Witness Lists and Exhibits by September 18, 2015,**

1 with courtesy copies provided to the presiding Administrative Law Judge.

2 IT IS FURTHER ORDERED that **the hearing remains scheduled to commence on**
3 **November 2, 2015, at 10:00 a.m.**, at the Commission's offices, 1200 West Washington Street,
4 Hearing Room No. 1, Phoenix, Arizona.

5 IT IS FURTHER ORDERED that **the parties shall also set aside November 3-6, 2015, for**
6 **additional days of hearing**, if necessary.

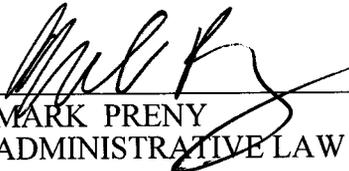
7 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
8 Communications) is in effect and shall remain in effect until the Commission's Decision in this
9 matter is final and non-appealable.

10 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
11 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

12 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance
13 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
14 Supreme Court Rule 42). Representation before the Commission includes appearances at all hearings
15 and procedural conferences, as well as all Open Meetings for which the matter is scheduled for
16 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
17 Law Judge or the Commission.

18 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,
19 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
20 ruling at hearing.

21 DATED this 31st day of August, 2015.

22
23 
24 MARK PRENY
ADMINISTRATIVE LAW JUDGE

25
26 Copies of the foregoing mailed/delivered
this 31st day of August, 2015, to:

27 Robert D. Bjerken
28 P.O. Box 2921
Scottsdale, AZ 85252

1 Marty O'Malley
2 Julie Unruh O'Malley
3 1113 Cypress Ridge Lane
4 Las Vegas, NV 89144

5 Matthew Neubert, Director
6 Securities Division
7 ARIZONA CORPORATION COMMISSION
8 1300 West Washington Street
9 Phoenix, AZ 85007

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By: 
Tammy Velarde
Assistant to Mark Preney